BERNARD FOON & ORS. v. PUBLIC PROSECUTOR

[F.C. (Azmi C.J. (Malaya), Pike C.J. (Borneo) & MacIntyre F.J.) June 17, 1968]

[K.L. — Federal Court Criminal Appeal No. X7 of 1968]

Criminal Law and Procedure — Kidnapping — Robbery — Common intention to commit — Kidnapping Act, 1961, s. 3(1) and Penal Code, s. 34.

The appellants were convicted of abducting a boy with intent to hold him for ransom in pursuance of a common intention punishable under section 3(1) of the Kidnapping Act, 1961, read with section 34 of the Penal Code. On appeal it was contended that (a) the learned trial judge was wrong in law in failing to consider that although the boy himself was incapable of giving his consent, the circumstances indicated that consent was granted by the father of the child and (b) although there was a common intention to commit robbery there was no common intention in respect of kidnapping.

Held: (1) the first submission ignored the circumstances of fear induced by the three appellants. These circumstances of fear deprived the consent or any voluntariness;

(2) the 2nd and 3rd appellants who remained in the room while the 1st appellant was demanding $5,000 or the son were giving mute aid to the 1st appellant in his demands and later remained in the house on guard for a sufficient time for the 1st appellant to abduct and take away the child. All this evidence was sufficient to justify an inference that there was common intention.

FEDERAL COURT.

Peter Yeoh for the 1st appellant.

D. R. Seenivasagam for the 2nd & 3rd appellants.

K. Somasundram (Deputy Public Prosecutor) for the respondent.

The judgment of the Federal Court was delivered by:—

Azmi C.J. (Malaya): The appellants were convicted of abducting a boy Tan Boon Teik with intent to hold him for ransom in pursuance of a common intention, punishable under section 3(1) of the Kidnapping Act, 1961 read with section 34 of the Penal Code.

Mr. Peter Yeoh for the first appellant submitted that the learned trial judge was wrong in law in failing to consider that although the boy was himself incapable of giving his consent, the circumstances set out indicated that consent was granted by the father of the child. In support of his argument he read to us the evidence of the father of the child at page 8 of the record where he said that he offered the younger child to be taken away because the elder one had to go to school the next day. Having offered the child there was therefore consent. But this ignores the circumstances of fear induced by the three appellants. These circumstances of fear cannot be ignored and deprived the consent or any voluntariness.

This ground must fail, and the first appellant's appeal must be dismissed.

Mr. Seenivasagam on behalf of the 2nd and 3rd appellants conceded that there was common intention in respect of the offence of robbery but submitted there was no common intention in respect of kidnapping. He bases his argument purely on the fact that the talking and acting was done by the appellant No. 1 only. He has overlooked the fact that the talking and acting was done in the presence of the other two appellants who later assisted in carrying out the kidnapping.

In considering the case of these two appellants regard must be had to what happened before and the disappointment of the two appellants at having found so little worthy of theft in the house and having complained to the first appellant about this. The 2nd and 3rd appellants then remained in the room while the first appellant was demanding $5,000 or the son, thereby giving mute aid to the first appellant in his demands and later remained in the house on guard for a sufficient time for the first appellant to abduct and take away the son without fear of a report being made to the police immediately. It should also be remembered that nothing was said in the house as to where the child was to be taken yet all foregathered at the place where he was taken later in the early hours of the next morning. And there was evidence as against the 3rd appellant of taking part in the receipt of the ransom money. All this evidence is in our view sufficient to justify an inference that there was common intention.

The appeal by the 2nd and 3rd appellants is also dismissed.

Appeals dismissed.

Solicitors: *Heng, Chen & Co.; S. Seenivasagam & Sons.*

VEERIAH v. NAL SINGH

[A.C.J. (Chang Min Tat J.) June 17, 1968]
[Ipoh — Civil Appeal No. 17 of 1967]

Landlord and Tenant — Controlled premises — One year's notice terminating tenancy under s. 12(1)(f) — Whether further notice necessary under s. 12(4) — Whether s. 12(4) superfluous — Whether the sections are in conflict — Control of Rent Ordinances, 1956, ss. 12(1)(f) and 12(4).

Where a landlord applies for possession of premises under section 12(1)(f) of the Control of Rent Ordinance, there is no necessity to give a further notice under section 12(4) in addition to the one year's notice given under section 12(1)(f). The giving of the one year's notice is sufficient compliance with both subsections.

Further there was no conflict between the requirement of one year's notice under section 12(1)(f) and section 12(4) but if the court was wrong in seeing no no superfluity in section 12(4) with regard to the one year's notice in section 12(1)(f), then the proper construction was to consider in so far as section 12(1)